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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1613

COMMONWEALTH OF PENNSYLVANIA,
Respondent

v.

EDWARD E. HUFFNAGLE,
Petitioner

BRIEF FOR RESPONDENT IN OPPOSITION

ON PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF PENNSYLVANIA

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OPINIONS BELOW

Commonwealth v. Huffnagle, — Pa.Super. —, — A.2d. —, (1980) (Not Yet Reported).

STATEMENT OF JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition except that jurisdiction is sought under 28 U.S.C. §1257(3) rather than under 27 U.S.C. §1257(3).

QUESTIONS PRESENTED FOR REVIEW

(1) Was it necessary for drug agents to knock and announce their identity and purpose, then wait for any substantial period of time before entering a motel room, when one of them had been invited in and concluded a drug transaction only moments before this re-entry?

(2) Was it necessary for drug agents to secure either an arrest warrant or a search warrant to enter a motel room to arrest the occupant and seize contraband when one of the agents had been inside to conclude a delivery of marihuana, had stepped outside for just a few minutes, and came back almost immediately?

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent Amendments are set forth in the Petition at Page 3.

COUNTER STATEMENT OF THE CASE

The Petitioner was convicted, following a non-jury trial, of (1) the possession of marihuana, a controlled substance, with the intent to deliver the same and of (2) the delivery of same.

Prior to trial he had filed a motion to suppress evidence which was denied after a hearing.

The events leading to his arrest and conviction are as follows:

At approximately 10:15 P.M. on August 4, 1977, Daniel Licklider, a Pennsylvania Drug Control Agent was introduced to the Petitioner by an informant. This meeting took place at the parking lot of a Holiday Inn. Petitioner agreed to sell 47 pounds of marihuana to the

agent for the sum of $1,800.00. There was mutual concern about being defrauded so the agent gave the money to the informant to hold until the marihuana was produced.

The three men then proceeded to a mobile home. Petitioner and informant travelled in one vehicle and the agent in a second.

After some time at the mobile home the Petitioner instructed the agent to follow him to another location to receive the marihuana.

The next location was the Crown Motel, and Petitioner, the informant, and Agent Licklider entered Room 6. The Petitioner revealed four large plastic bags under the bed, said "your dope's in there", and began pulling the bags out from under the bed. (Transcript, p. 11).

The Petitioner wanted everyone to leave and wanted the agent to come back alone to get the marihuana at a later time. The agent objected to this and then peered out the door. He then saw the informant handing a wad of U.S. currency to the Petitioner. (Transcript, p. 13 and 14).

Agent Licklider told Petitioner that he was going outside to get a scale from the trunk of his vehicle and would be back in to weigh the marihuana. Instead he signaled to other police officers and within moments Agent Licklider and another agent knocked on the door and yelled, "It's Danny. Open Up!" The other agent immediately knocked on the closed, but unlocked door. When there was no response, he waited "a couple seconds", knocked again, shouted "State Narcotics" and went through the door.

Although the marihuana was still there, the Petitioner and informant had apparently exited through a rear door.

ARGUMENT

The issue in this case is extremely narrow and the facts are virtually sui generis and do not warrant review by this Court on certiorari.

A drug agent concluded a sale and delivery of 47 pounds of marihuana, in a motel room. The Petitioner and an informant were present. At the time the Petitioner said "here's your dope" and displayed it, then took the agent's money from the informant who was holding it, the agent could have arrested the Petitioner on the spot.

Instead, he stepped outside momentarily to call for assistance. It was approximately 12:00 midnight. In just a few minutes, the agent and his back-up team knocked on the door, waited a few seconds, shouted "State Narcotics" and entered through the closed but unlocked door.

This case is not a true "knock and announce" case in which police officers are coming unexpectedly to execute a warrant. Here the first drug agent had virtual permission to re-enter the room he had left moments before on the pretext of securing a scale from the trunk of his car.

The facts in this case are analogous to those in *U.S. v. Johnson*, 561 F.2d 832 (1977). Cert. Denied June 20, 1977, 432 U.S. 907, 97 S.Ct. 2953 (1977). There, the entry into a building at approximately 2:30 A.M. was approved by the Court of Appeals when officers clearly observed the packaging of heroin taking place.

The State of Pennsylvania does recognize and follow the decisions of the U.S. Supreme Court on search and seizure. *Commonwealth v. DeMichel*, 442 Pa. 553, 277 A.2d 159 (1971).

In the case at bar, the courts of Pennsylvania have recognized the unique facts and exigent circumstances and approved reasonable and lawful conduct of police officers.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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